

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**DONNA CURLING, ET AL.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER, ET AL.,  
Defendants.**

**Civil Action No. 1:17-CV-2989-AT**

**COALITION PLAINTIFFS**

**AND**

**NON-PARTY JOSEPH KIRK, BARTOW  
COUNTY ELECTION SUPERVISOR**

**JOINT DISCOVERY STATEMENT REGARDING PRODUCTION OF  
SCANNED BALLOT IMAGES**

**March 19, 2021**

## JOINT DISCOVERY STATEMENT REGARDING PRODUCTION OF SCANNED BALLOT IMAGES

Pursuant to Part III(e) of this Court’s Standing Order, the Coalition Plaintiffs and non-party Joseph Kirk, Bartow County Elections Supervisor (“Non-party Kirk”) have conferred but are unable to resolve this discovery dispute. Attached hereto as Exhibit 1 is the relevant discovery (excerpts from the Coalition Plaintiffs’ Subpoena and Non-party Kirk’s Objections (Doc. 1038)).

*Issue:* Whether a Georgia records preservation statute, O.C.G.A. § 21-2-500, prohibits or excuses Gwinnett from producing, in response to an appropriate subpoena, electronic copies of scanned ballot images.

*Summary:* The issue presented in this dispute is identical to the issue presented in the Joint Discovery Statement Regarding Production of Scanned Ballot Images submitted on January 27, 2021 by the Coalition Plaintiffs and the Gwinnett County Board of Elections (Doc. 1057).

*Parties’ Positions:* Coalition Plaintiffs and Non-party Kirk incorporate by reference the arguments presented by Coalition Plaintiffs and Gwinnett County Board of Elections, respectively, in the January 27, 2021 Joint Discovery Statement Regarding Production of Scanned Ballot Images (Doc. 1057).

Respectfully submitted this 19<sup>th</sup> day of March, 2021.

/s/Bruce P. Brown

Bruce P. Brown

BRUCE P. BROWN LAW LLC

Georgia Bar No. 064460

bbrown@brucepbrownlaw.com

1123 Zonolite Road, Suite 6

Atlanta, GA 30306

(404) 386-6856

*Attorney for Coalition Plaintiffs*

/s/ J. Jayson Phillips

J. Jayson Phillips

TALLEY, RICHARDSON & CABLE, P.A.

Georgia Bar No. 576305

[jphillips@trc-lawfirm.com](mailto:jphillips@trc-lawfirm.com)

367 West Memorial Drive

Dallas, Georgia 30132

(770) 445-4438

*Attorney for Non-party Joseph Kirk*

CERTIFICATE OF COMPLIANCE AND SERVICE

The foregoing pleading has been prepared in accordance with the requirements of LR 5.1 and served on all counsel via the PACER-ECF system.

This 19th day of March, 2021.

/s/ Bruce P. Brown

Bruce P. Brown

BRUCE P. BROWN LAW LLC

1123 Zonolite Rd. NE, Suite 6

Atlanta, Georgia 30306

(404) 386-6856

*Counsel for Plaintiff Coalition for Good  
Governance*

E  
X  
H  
I  
B  
I  
T

UNITED STATES DISTRICT COURT  
for the

CURLING, et al.

Plaintiff

v.

RAFFENSPERGER, et al.

Defendant

Civil Action No. 17cv2989

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Joseph Kirk, Bartow County Elections Supervisor

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:  
See Attachment A

Place: email or delivery to Cary Ichter

Cary Ichter 3340 Peachtree Rd. NE, Ste.1530, Atlanta GA

Date and Time: 5pm  
1/12/21

404.869.7600 cichter@ichterdavis.com

30326

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/23/20

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of Coalition for Good Governance)  
Bruce Brown, 1123 Zonolite Rd. Atlanta, GA 30306, who issues or requests this subpoena, are:  
bbrown@brucebrownlaw.com 404-881-0700

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

## **Attachment A**

### **Coalition for Good Governance Subpoena of Bartow County, Georgia**

December 22, 2020

1. All reports, voter complaints, communications, incident reports, emails, text messages, and other documents regarding the problems encountered at the polling places in the November 3, 2020 election related to voter check-in, pollpad accuracy, and voting.
2. Documents reflecting voter complaints relating to inaccuracy of the BMD printed ballots and all documents accounting for spoiled ballots for elections conducted after October 1, 2020.
3. Reports sent to Georgia Secretary of State after September 15, 2020 concerning errors, malfunctions, user errors, security concerns, ballot secrecy issues, or other operations problems related to the Dominion Voting System, including the KnowInk PollPad system.
4. Electronic copies of all scanned ballot images appended with the Auditmark record showing the interpretation of each vote where applicable, from both the election day count and the machine recount of the November 3, 2020 election.
5. An electronic copy of all Cast Vote Records from the Dominion “EMS Results Tally and Reporting” system, from both the original count and machine recount of the November 3, 2020 election.
6. The names or other identifiers of all batches of ballots cast Absentee by Mail for which the election day count of that batch differs from the Hand Audit Count in the 2020 Presidential Election race.
7. High quality scans of at least 300 dpi for all ballots in the batches identified above in item (6).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al.,	*	
	*	CIVIL ACTION NO.
Plaintiffs,	*	1:17-CV-2989-AT
	*	
v.	*	
	*	
BRAD RAFFENSPERGER, et al.,	*	
	*	
Defendants	*	
	*	

**OBJECTION OF NON-PARTY JOSEPH KIRK, BARTOW COUNTY  
ELECTIONS SUPERVISOR, TO SUBPOENA TO PRODUCE  
DOCUMENTS FROM COALITION FOR GOOD GOVERNANCE**

COMES NOW JOSEPH KIRK, in his official capacity as the Bartow County, Georgia Elections Supervisor, by and through the undersigned counsel, and makes this his objection to Plaintiff COALITION FOR GOOD GOVERNANCE's Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, dated December 23, 2020, by showing and stating as follows:

1.

On December 22, 2020, Non-party JOSEPH KIRK (hereinafter "KIRK") was served with a Subpoena to Produce Documents, a copy of which is attached as Exhibit A. The subpoena requests production of 14 enumerated categories of



documents. The subpoena commands production of the documents no later than January 12, 2021.

2.

Non-party KIRK objects to having to comply with the subpoena in regard to all requested documents by the subpoena's listed January 12, 2021 deadline as this short compliance deadline in the midst of having to conduct Bartow County's U.S. Senate runoff elections is unduly burdensome. As this Court is fully aware, all elections superintendents in the State of Georgia are fully focused on conducting the unprecedented U.S. Senate runoff elections which are currently scheduled for January 5, 2021, and for which advance voting began on December 14, 2020. KIRK's office will be wholly devoted to completing this election duty in conformity with Georgia law, including any recounts, post-election certification, and risk limiting audits, etc. Despite the subpoena's overly burdensome time deadline, and except as otherwise objected to herein, Non-party KIRK intends to comply with the subpoena production by January 26, 2020. Counsel for Non-party KIRK has attempted in good faith to informally contact counsel responsible for issuance of the subpoena regarding this extension but has not received a response.

3.

To the extent that responsive documents exist, Non-party KIRK intends to comply with the requests set forth in the subpoena except as otherwise noted hereafter.

4.

Non-party KIRK objects to items 4 and 7 of the subpoena which seek production of the following:

4. Electronic copies of all scanned ballot images appended with the Auditmark record showing the interpretation of each vote where applicable, from both the election day count and the machine recount of the November 3, 2020 election.

7. High quality scans of at least 300 dpi for all ballots in the batches identified above in item (6).

The disclosure of ballot images violates the voting protections afforded by the Georgia Constitution which provides that votes are cast by secret ballot. 1983 Ga. Const. Art. II, Sec. I, Para. I. Additionally, pursuant to O.C.G.A. § 21-2-500(a) such documents are statutorily held under seal for a period of 24 months, subject to release only upon order of a superior court.